



September 22, 2016

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street SW
Washington, DC 20554

Re: *Ex Parte* Letter, *Expanding Consumers' Video Navigation Choices, Commercial Availability of Navigation Devices*, MB Docket No. 16-42, CS Docket No. 97-80

Dear Ms. Dortch:

On September 21, 2016, members of the Consumer Video Choice Coalition (“the Coalition”), represented by John Bergmayer and Kate Forscey of Public Knowledge; John Howes of CCIA; Robert Schwartz of Constantine Cannon LLP, counsel to Hauppauge Computer Works, Inc.; and Angie Kronenberg and the undersigned counsel of INCOMPAS (collectively, the “Coalition representatives”) met with David Grossman, Chief of Staff to Commissioner Clyburn in connection with the above-captioned proceeding.

The Coalition expressed support for the Chairman’s proposal¹ and reiterated positions about how the Commission can enact rules that will create a navigation device market that meets the core competition and innovation principles championed by the Coalition throughout the proceeding.² These principles remain vital to the Commission’s dual goals of saving consumers money by eliminating set-top box rental fees and introducing meaningful competition and innovation in the video navigation device market.³

The Coalition representatives further asserted that the Commission retains the jurisdiction necessary to provide oversight over the development of a standard license extended to device

¹ FED. COMM. COMM’N, FACT SHEET: CHAIRMAN WHEELER’S PROPOSAL TO INCREASE CONSUMER CHOICE & INNOVATION IN THE VIDEO MARKETPLACE (Sep. 8, 2016).

² See Letter from Robert S. Schwartz on behalf of the Consumer Video Choice Coalition to Marlene H. Dortch, FCC, MB Docket No. 16-42, at 2 (filed July 1, 2016) (highlighting the Coalition’s support for (1) an open and independent user interface; (2) comparable functionality; (3) device interoperability; and (4) strong enforcement provisions)

³ See Public Knowledge, *Help #UnlockTheBox for New Ideas, More Competition, and Lower Prices*, YOUTUBE (Sep. 21, 2016), <https://www.youtube.com/watch?v=x8jLsEycNVw>. Coalition member Public Knowledge produced a video detailing the ways in which the Chairman’s proposal addresses these competition and innovation principles.

manufacturers and providers of widely deployed platforms for the purpose of providing multichannel video programming. The Chairman's proposal rightly safeguards device manufacturers from terms and conditions that may allow MVPDs and programmers to discriminate against certain categories or devices or to engage in anticompetitive behavior such as requiring prioritized search results. The Commission's decision to serve as a "backstop to ensure that nothing in the standard license will harm the marketplace for competitive devices"⁴ would, furthermore, be supported by the current rules. In 1998, the Commission adopted rules that require MVPDs to support the connection of competitive navigation devices and to provide interface parameters that would allow these devices to operate with multichannel video programming systems.⁵ The Coalition representatives asserted that these provisions, which remain in place today, define compelling interests of both the Commission and device entrants in any specification and necessary license that would result from this rulemaking.

This letter is being provided to your office in accordance with Section 1.1206 of the Commission's rules.

Respectfully submitted,

Christopher L. Shipley
Attorney & Policy Advisor
INCOMPAS

cc:
David Grossman

⁴ CHAIRMAN WHEELER'S PROPOSAL, *supra* note 1.

⁵ See 47 CFR §§ 76.1201, 76.1203, 76.1205 (Section 76.1201 provides an exception "where electronic or physical harm would be caused" by a navigation device and Section 76.1203 allows denial of attachment if the devices raise "legitimate concerns of electronic or physical harm or theft of service").